

1 NOSSAMAN LLP
2 STANLEY S. TAYLOR III (SBN 51955)
3 staylor@nossaman.com
4 CARL L. BLUMENSTEIN (SBN 124158)
5 cblumenstein@nossaman.com
6 NATASHA SAGGAR SHETH (SBN 282896)
7 nsagggarsheth@nossaman.com
8 50 California Street, 34th Floor
9 San Francisco, CA 94111
10 Telephone: 415.398.3600
11 Facsimile: 415.398.2438

*Public Agency –
No Filing Fee Required
Government Code § 6103*

7 Attorneys for Respondents SAN FRANCISCO COUNTY
8 TRANSPORTATION AUTHORITY, TILLY CHANG, and
9 CYNTHIA FONG

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
02/27/2018
Clerk of the Court
BY: VANESSA WU
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN FRANCISCO - UNLIMITED JURISDICTION
13

14 SF URBAN FOREST COALITION, a
15 California not-for-profit corporation,

16 Petitioner,

17 vs.

18 CITY AND COUNTY OF SAN FRANCISCO,
19 a charter city and county, SAN FRANCISCO
20 COUNTY TRANSPORTATION
21 AUTHORITY, an agency and department of the
22 City and County of San Francisco, TILLY
23 CHANG, its Executive Director and CYNTHIA
24 FONG, its Deputy Director for Finance and
25 Administration, officials of the City and County
26 of San Francisco, and DOES 1 through xx,
27 inclusive,

28 Respondents.

Case No: CPF-18-516020

**RESPONDENTS SAN FRANCISCO
COUNTY TRANSPORTATION
AUTHORITY, TILLY CHANG, AND
CYNTHIA FONG'S OPPOSITION TO
PETITION FOR WRIT OF MANDAMUS**

Hearing Date: March 8, 2018
Hearing Time: 9:30 a.m.
Department: 302
Judge: Hon. Harold Kahn

Action Filed: January 23, 2018

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	2
INTRODUCTION	3
BACKGROUND	4
A. The SFCTA Was Created Pursuant To Authority Granted By The California Legislature.	4
B. Background of the Present Dispute.....	4
ARGUMENT	5
I. Because Respondents Produced the Withheld Documents, the Petition is Now Moot and Should Be Dismissed.....	5
II. Because It is an Independent “County” Agency Created Pursuant to Authority Granted By the State Legislature, SFCTA is Not Subject to San Francisco’s Sunshine Ordinance.....	6
A. SFCTA Is An Independent “County” Agency Created By And Deriving Its Authority From State Statute.	6
B. SFCTA Operates As An Agency Independent From The City And County Of San Francisco.	9
C. As An Independent Agent Of The State, The SFCTA Is Immune From Local Regulation, Such As San Francisco’s Sunshine Ordinance, Absent Express Consent.	10
III. San Francisco’s Sunshine Ordinance, as Adopted by the Voters, Expressly Acknowledges That It Does Not Apply to the SFCTA.	11
A. The Text of the Sunshine Ordinance Specifically Contemplates That The SFCTA Is Exempt From Its Provisions.	12
B. The Task Force Charged With Enforcing Compliance With the Sunshine Ordinance Has Confirmed That The SFCTA Is Not Subject To Its Terms.....	12
IV. In Response To the Requests at Issue, SFCTA Complied With the CPRA by Producing Requested Documents and Withholding Drafts as Authorized by the Exemption.	14
CONCLUSION	15

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Assn. of Irrigated Residents v. Dept. of Conservation</i> (2017) 11 Cal. App. 5th 1202	5, 6
<i>City & Cty. Of San Francisco v. Regents of Univ. of California</i> (2017) 11 Cal. App. 5th 1107	10
<i>Laidlaw Waste Sys., Inc. v. Bay Cities Servs., Inc.</i> (1996) 43 Cal. App. 4th 630	11
<i>Los Angeles Cty. v. City of Los Angeles</i> (1963) 212 Cal. App. 2d 160	8
<i>Los Angeles Cty. v. Cont'l Corp.</i> (1952) 113 Cal. App. 2d 207	9
<i>Los Angeles Cty. v. Riley</i> (1936) 6 Cal. 2d 625	8
<i>Marin Cty. v. Superior Court of Marin Cty.</i> (1960) 53 Cal. 2d 633	8
<i>Pac. States Enterprises, Inc. v. City of Coachella</i> (1993) 13 Cal. App. 4th 1414	9
<i>Santa Clara Cty. Local Transportation Auth. v. Guardino</i> (1995) 11 Cal. 4th 220	8
<i>Schoshinski v. City of Los Angeles</i> (2017) 9 Cal. App. 5th 780	5, 6
<i>Yamaha Corp. of Am. v. State Bd. of Equalization</i> (1998) 19 Cal. 4th 1	13

Statutes

Cal. Gov't Code § 6254	14
Cal. Pub. Util. Code §§ 131000, <i>et seq.</i>	<i>passim</i>
California Public Records Act	<i>passim</i>
San Francisco Business and Tax Regulations, Article 14.....	10
San Francisco Sunshine Ordinance.....	<i>passim</i>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION

Respondents San Francisco County Transportation Authority, Tilly Chang, and Cynthia Fong (collectively, hereinafter, "SFCTA") hereby oppose the SF Urban Forest Coalition's Petition for Writ of Mandamus ("Petition"), on the following grounds:

1. The Petition, which alleges three causes of action to compel disclosure of certain records from SFCTA's files, is moot. On Friday, February 16, 2018, Respondents provided Petitioner with all 40 requested documents, thus providing all of the substantive relief requested. Accordingly, the Petition is not properly before the Court and should be dismissed.¹

2. SFCTA is *not* "an agency and department of the City and County of San Francisco." (Petitioner's Jan. 29, 2018 Memorandum of Points and Authorities in Support of Petition ("MPA") at 13:6-7.) The SFCTA is an independent "county" agency, deriving its authority from state statute, acting as a local agent of the State to manage, plan for, and oversee local transportation initiatives. In form and function, the SFCTA operates as a separate and distinct entity from the City and County of San Francisco, with its own governance structure and its own budget. As such, the SFCTA is not subject to local regulations or ordinances absent consent by the Legislature.

3. The express provisions of the Sunshine Ordinance acknowledge that the ordinance does not apply to the SFCTA and, further, the task force created to ensure compliance with the ordinance recognizes that the ordinance does not apply to the SFCTA.

4. The SFCTA complied with the provisions of the California Public Records Act ("CPRA") when withholding certain documents based on statutorily authorized exemptions.

¹ This argument was the basis of Respondents' Demurrer and Motion to Dismiss (filed February 21, 2018, scheduled for hearing on March 16, 2018.) Respondents' Demurrer also argued that the Petition should be dismissed based on Petitioner's lack of legal capacity to sue due to its status as a "suspended" corporation according to the California Secretary of State. On February 21 when the Demurrer was filed, Petitioner was still showing as "suspended;" however, as of the date of this filing (February 27, 2018), the California Secretary of State website lists Petitioner SF Urban Forest Coalition as having "active" status. (Declaration of Carl Blumenstein In Support of Respondents' Opposition ("Blumenstein Decl.") at ¶ 3.)

1 Because the documents that were initially withheld under the CPRA have since been
2 produced to Petitioner, this Court need not and should not reach the substance of the Petition.
3 Nonetheless, if the Court were to reach the issue, it should find that SFCTA is not subject to the
4 provisions of the Sunshine Ordinance, and deny Petitioner's request for a declaration to the
5 contrary.

6 BACKGROUND

7 A. The SFCTA Was Created Pursuant To Authority Granted By The California 8 Legislature.

9 The SFCTA, established in 1989 pursuant to the provisions of the Bay Area County
10 Traffic and Transportation Funding Act contained in California Public Utilities Code §§ 131000,
11 *et seq.* by voter approval of Proposition B, is a sub-regional transportation planning and
12 programming agency. Originally created to administer the proceeds of the retail transactions and
13 use tax also approved by Proposition B, the City and County of San Francisco's first local sales
14 tax for transportation, the SFCTA has since been asked to take on a number of additional roles
15 and responsibilities mandated by State law. On November 4, 2003, City and County of San
16 Francisco voters approved Proposition K, adopting a new transportation expenditure plan, which
17 superseded Proposition B, and extended the existing one-half of one percent (½%) County-wide
18 sales tax.

19 Pursuant to the statute, the SFCTA is a separate legal entity from the City and County of
20 San Francisco, with its own staff, budget, operating rules, policies, board and committee
21 structure. The SFCTA's borrowing capacity is separate and distinct from that of the City and
22 County of San Francisco. The SFCTA does not own or operate any transit systems, but it
23 coordinates with and provides funding to certain other agencies that do operate transit systems.

24 B. Background of the Present Dispute.

25 The present petition arises from three requests that Petitioner, SF Urban Forest Coalition,
26 sent to the SFCTA, pursuant to the California Public Records Act, in March 23, June 16 and June
27 30, 2017. (Petition at ¶¶ 19, 26.) The SFCTA responded by producing certain documents and
28 also explaining that certain responsive documents, about 40 in number comprised largely drafts

1 and related emails, were not being provided because they came within certain statutory
2 exemptions. (*Id.* at ¶¶ 19, 24; *See also* Feb. 21, 2018 Declaration of Steve Stamos In Support of
3 Respondents' Demurrer ("Stamos Decl.") at ¶ 2.)

4 On January 23, 2018, Petitioner filed its Petition for Writ of Mandamus in this Court.
5 Three weeks later, on February 16, SFCTA provided Petitioner with copies of the 40 documents
6 that had been withheld.² (Declaration of Carl Blumenstein In Support of Respondents'
7 Opposition ("Blumenstein Decl.") at ¶ 2; Stamos Decl. at ¶ 2.) Respondents' counsel urged
8 Petitioner to dismiss the Petition as moot. (Blumenstein Decl. at ¶ 2.) When Petitioner refused,
9 Respondents on February 21 filed a demurrer and motion to dismiss, both of which are scheduled
10 for hearing on March 16, 2018.

11 ARGUMENT

12 I. BECAUSE RESPONDENTS PRODUCED THE WITHHELD DOCUMENTS, THE 13 PETITION IS NOW MOOT AND SHOULD BE DISMISSED.

14 As noted above, on February 16, 2018, Respondents provided Petitioner with the 40
15 documents that had initially been withheld. (Blumenstein Decl. at ¶ 2; Stamos Decl. at ¶ 2.) As
16 a result, the Petition is now moot. A court has an obligation to refrain from giving opinions on
17 moot questions:

18 The duty of every court is to decide actual controversies by a
19 judgment which can be carried into effect, and not to give opinions
20 upon moot questions or abstract propositions, or to declare
21 principles or rules of law which cannot affect the matter in issue in
22 the case before it. [A]lthough a case may originally present an
23 existing controversy, if before decision it has, through act of the
24 parties or other cause, occurring after the commencement of the
action, lost that essential character, it becomes a moot case or
question which will not be considered by the court. Where such
mootness exists, proceeding further with the case can have no
practical effect or cannot provide the parties with effective relief.
When events render a case moot, the court, whether trial or
appellate, should generally dismiss it.

25 (*Assn. of Irrigated Residents v. Dept. of Conservation* (2017) 11 Cal. App. 5th 1202, 1213–14;
26

27 ² In the week leading up to February 16, SFCTA's counsel attempted to reach complete
28 settlement with Petitioner, including a resolution of Petitioner's claim for attorneys' fees.
(Blumenstein Decl. at ¶ 2.) That effort was not successful. (*Id.*)

1 see also, e.g., *Schoshinski v. City of Los Angeles* (2017) 9 Cal. App. 5th 780, 791 (“The pivotal
2 question in determining if a case is moot is therefore whether the court can grant the plaintiff any
3 effectual relief. If events have made such relief impracticable, the controversy has become
4 ‘overripe’ and is therefore moot.”).) A mootness argument can be raised at any time:
5 “[M]ootness has been described as the doctrine of standing set in a time frame: The requisite
6 personal interest that must exist at the commencement of the litigation (standing) must continue
7 throughout its existence (mootness).” (*Schoshinski, supra*, 9 Cal. App. 5th at 791.)

8 Petitioner’s pleadings unequivocally assert that the requested substantive relief is
9 disclosure of the records that Respondents initially withheld when SFCTA responded to the
10 California Public Records Act requests: “Petitioner brings this Petition to obtain disclosure of the
11 withheld records based on three separate grounds[.]” (Petition at ¶ 12; MPA at 1:1-3, 13:21-23
12 (reiterating that relief requested is disclosure of withheld public records).)

13 Accordingly, there is no longer an actual controversy between the parties for the Court to
14 adjudicate. Because the Court may not opine on “abstract propositions, or to declare principles
15 or rules of law which cannot affect the matter in issue in the case before it,” the Court need not
16 and should not reach the substance of the Petition and, instead, should dismiss the Petition and
17 the three causes of action alleged within. (*Assn. of Irrigated Residents, supra*, 11 Cal. App. 5th at
18 p. 1223.)

19 **II. BECAUSE IT IS AN INDEPENDENT “COUNTY” AGENCY CREATED**
20 **PURSUANT TO AUTHORITY GRANTED BY THE STATE LEGISLATURE,**
21 **SFCTA IS NOT SUBJECT TO SAN FRANCISCO’S SUNSHINE ORDINANCE.**

22 As a matter of law, the San Francisco Sunshine Ordinance does not apply to the SFCTA.
23 The SFCTA was created pursuant to state statute, as a county agency. As such, it is a political
24 subdivision of the State and is immune from San Francisco’s municipal regulations. For the
25 reasons explained below, Petitioner’s request for a declaration to the contrary should be denied.

26 **A. SFCTA Is An Independent “County” Agency Created By And Deriving Its**
27 **Authority From State Statute.**

28 In 1986, the state legislature enacted the Bay Area County Traffic and Transportation
Funding Act, codified at California Public Utilities Code §§ 131000, *et seq.* That statute led to

1 the creation of the SFCTA, and by now there are 23 other like organizations throughout
2 California. In enacting this statute, the state Legislature specifically found that “in the nine-
3 county San Francisco Bay area, traffic and transportation improvements are an immediate high
4 priority” and thus,

5 it is in the public interest to allow the voters in any county in the
6 nine-county San Francisco Bay area to either create a county
7 transportation authority or to authorize the [Metropolitan
8 Transportation C]ommission to implement a retail transactions and
use tax for the purpose of funding a local transportation
expenditure plan showing a need for the proceeds from that tax.

9 (Cal. Pub. Util. Code § 131001.) The statute contemplated that any of the nine Bay Area
10 counties that wanted to create a county transportation authority could seek voter approval for a
11 retail sales tax increase of either one-half of 1 percent or 1 percent that would be used for local
12 transportation improvements, and administered either by a newly created transportation authority
13 or the existing regional transportation agency, the Metropolitan Transportation Commission.

14 (Cal. Pub. Util. Code §§ 131001, 131102.) The statute specified the amount of sales tax that
15 could be proposed for approval by local voters, and further specified how the election would be
16 paid for and what information was required to be presented to the voters. (Cal. Pub. Util. Code
17 §§ 131102-131104.)

18 The statute also specifies, in considerable detail: how a transportation authority could be
19 created³ (including who may comprise the membership of a transportation authority⁴; when the
20 initial meeting of a transportation authority shall convene and who shall convene it⁵); how a
21 transportation authority shall be administered (including the conduct of meetings⁶, the duties of a
22
23

24 ³ Cal. Pub. Util. Code § 131240 (“Upon approval of a retail transactions and use tax at an
25 election conducted pursuant to Chapter 3 (commencing with Section 131100) in a county
with an adopted county transportation expenditure plan that includes a provision for the
creation of a county transportation authority, the authority shall be created at that election.”)

26 ⁴ Cal. Pub. Util. Code § 131241.

27 ⁵ Cal. Pub. Util. Code § 131242 (“The Secretary of Transportation shall convene the initial
meeting of the county transportation authority at the county seat, within 90 days after the
authority is created.”)

28 ⁶ Cal. Pub. Util. Code § 131264 (“All meetings of a county transportation authority shall be
conducted in the manner prescribed by the Ralph M. Brown Act.”)

1 transportation authority⁷, how action may be taken⁸, the manner of adoption of an annual
2 budget⁹, the appointment of officers¹⁰ and compensation of members¹¹); and the powers and
3 functions of a transportation authority (including how claims and lawsuits by or against a
4 transportation authority may be addressed¹², the power to contract¹³, and issuing authority to
5 issue bonds and how those bonds may be used and sold.¹⁴).

6 All this is highlighted to emphasize the extent to which SFCTA is a creature of state
7 statute, acting as a local agent of the State to manage, plan for, and oversee local transportation
8 initiatives. As a “county” agency created by state statute, the SFCTA derives its authority from
9 the State and functions as a state-empowered entity:

10 [A] county is merely a political subdivision of state government,
11 exercising only the powers of the state, granted by the state,
12 created for the purpose of advancing the policy of the state at large,
13 for purposes of political organization and civil administration, in
14 matters of finance, of education, of provision for the poor, of
military organization, of the means of travel and transport, and
expressly for the general administration of justice.

15 (*Marin Cty. v. Superior Court of Marin Cty.* (1960) 53 Cal. 2d 633, 638–39 (internal citations
16 and quotations omitted).) “[A] county stands in the place of the state to the extent that the
17 powers of the state have been delegated to it.” (*Id.* at 639.) “Counties are vested by the state
18 with a variety of powers, which the state itself may assume or resume and directly exercise.”
19 (*Los Angeles Cty. v. City of Los Angeles* (1963) 212 Cal. App. 2d 160, 164; *see also Los Angeles*
20 *Cty. v. Riley* (1936) 6 Cal. 2d 625, 627–28; *Santa Clara Cty. Local Transportation Auth. v.*
21 *Guardino* (1995) 11 Cal. 4th 220, 233 (finding that petitioner Santa Clara County Local
22 Transportation Authority is “an agency of the state formed pursuant to general law (Pub. Util.

23
24
25 ⁷ Cal. Pub. Util. Code § 131265.

⁸ Cal. Pub. Util. Code §§ 131262, 131263.

⁹ Cal. Pub. Util. Code § 131266.

¹⁰ Cal. Pub. Util. Code § 131267.

¹¹ Cal. Pub. Util. Code § 131268.

¹² Cal. Pub. Util. Code §§ 131281, 131282.

¹³ Cal. Pub. Util. Code §§ 131283- 131286.

¹⁴ Cal. Pub. Util. Code §§ 131108- 131121.

1 Code, § 180000 et seq.) for the local performance of a governmental function (raising tax
2 revenues) within limited boundaries (Santa Clara County).”).)

3 **B. SFCTA Operates As An Agency Independent From The City And County Of**
4 **San Francisco.**

5 Consistent with its status as a county agency created by state statute, SFCTA operates in
6 form and function as an entity independent from the City and County of San Francisco. It states
7 as much in its annual reports. (*See, e.g.*, Petition at ¶ 32; Blumenstein Decl., Ex. B, SFCTA
8 2017 Annual Report at p. 60 (“[T]he Transportation Authority operates as a special purpose
9 government agency under state law. The Transportation Authority is empowered by statute to
10 issue debt in order to finance transportation projects in the voter-approved Prop K Expenditure
11 Plan, and its debt capacity is separate and distinct from that of the City.”).) Further, the SFCTA
12 adopts a separate budget and issues separate financial statements from the City and County of
13 San Francisco.¹⁵

14 It is also worth noting that “[w]ell-established and well-recognized case law holds that
15 the mere fact that the same body of officers acts as the legislative body of two different
16 governmental entities does not mean that the two different governmental entities are, in actuality,
17 one and the same.” (*Pac. States Enterprises, Inc. v. City of Coachella* (1993) 13 Cal. App. 4th
18 1414, 1424.) Thus, the fact that the Board of Supervisors for the City and County of San
19 Francisco also act as the Commissioners of the SFCTA does not mean that the two different
20 governmental entities are, in actuality, one and the same. (*Id.* at p. 1424.) When acting on
21 behalf of the SFCTA, the Commissioners act as an independent agency, not on behalf of the City
22 and County of San Francisco. (*See, e.g. Los Angeles Cty. v. Cont'l Corp.* (1952) 113 Cal. App.
23 2d 207, 220 (“Thus, the Board of Supervisors of the Los Angeles County Flood Control District,
24 when acting as such, are not county officers, but state officers, and any action taken by such
25 board is not action by the Board of Supervisors of the County of Los Angeles, as such, or of the
26 County of Los Angeles.”).)

27
28 ¹⁵ <http://www.sfcta.org/about-authority/budget-and-financial-statements> (last visited February
13, 2018.); *See also* Cal. Pub. Util. Code § 131265:

1 Thus, as an independent agency deriving its authority from state statute, the SFCTA is
2 not an agency of the City and County of San Francisco. It is not subject to the Sunshine
3 Ordinance.

4 **C. As An Independent Agent Of The State, The SFCTA Is Immune From Local**
5 **Regulation, Such As San Francisco’s Sunshine Ordinance, Absent Express**
6 **Consent.**

7 As an independent agent of the State, the SFCTA is not subject to local regulations or
8 ordinances absent express authorization by the Legislature. “State entities are exempt from
9 otherwise-valid local regulation when they are engaged in governmental activities unless a
10 constitutional provision or statute says they are not exempt. While state entities are free to
11 comply voluntarily with local measures to further the public interest, . . . they cannot be forced to
12 comply with those measures when they are performing their governmental functions.” (*City &*
13 *Cty. of San Francisco v. Regents of Univ. of California* (2017) 11 Cal. App. 5th 1107, 1114.)

14 Petitioner argues that SFCTA is subject to “Article 14 in the San Francisco Business and
15 Tax Regulations” and thereby suggests that SFCTA is subject to certain local regulations and
16 ordinance and thus should also be subject to the Sunshine Ordinance. (Petition at ¶¶ 38,48; MPA
17 at p. 6:12-18.) However, Article 14, applicable to the SFCTA, of the San Francisco Business
18 and Tax Regulations regulates the SFCTA only insofar as permitted by state statute. Section
19 1403 of the San Francisco Business and Tax Regulations states, in pertinent part, that its
20 “Purpose” is:

21 (b) To continue in effect the existing one-half of one percent
22 transactions and use tax in accordance with the provisions of Part
23 1.6 (commencing with Section 7251) of Division 2 of the
24 California Revenue and Taxation Code and Sections 131100 et
25 seq. of the California Public Utilities Code, which directs the
County Board of Supervisors to adopt the tax ordinance for voter
approval, exercising the taxing power granted to the San Francisco
County Transportation Authority in Public Utilities Code Section
131102 on behalf of said Authority[; and]

26 (h) To continue this tax pursuant to the authority granted by
27 Section 131102 of the Public Utilities Code, permanently and
28 subject to approval of future updates of the New Expenditure Plan
pursuant to Section 131056 of the Public Utilities Code.

Petitioner further attempts to argue that SFCTA is subject to the local Sunshine Ordinance by invoking language in the Constitution regarding the powers of charter cities and counties. (*See, e.g.*, Petition at ¶ 35 (“San Francisco’s powers as a ‘charter city’ supersede any of SFCTA’s claimed powers that conflict with those of the City of San Francisco[.]”).) But, the fact that San Francisco is a charter city and county does not give it the authority to supersede the powers of the State, unless the State has expressly consented. As explained below, the issue is one of sovereign immunity, and thus “it makes no difference whether the local governmental entity is a charter city as opposed to some other form of local government.” (*Laidlaw Waste Sys., Inc. v. Bay Cities Servs., Inc.* (1996) 43 Cal. App. 4th 630, 635.) In *Laidlaw*, the City of Chula Vista, a chartered city, asserted that the local school district was bound by the city’s exclusive franchise for hauling trash within the city limits. (*Id.* at p. 633.) Explaining that school districts are agencies of the state, the court held that the districts were immune from city regulation:

State agencies . . . enjoy immunity from local regulation unless the state, through statute or provision of the California Constitution, has consented to waive such immunity. . . . Since the question is one of immunity, not preemption, it makes no difference whether the local governmental entity is a charter city as opposed to some other form of local government. The sovereign immunity of a state agency from local regulation does not depend upon the source of the local governmental entity’s authority to make regulations, it depends upon whether consent to regulation has been expressly stated by the Legislature or in the state Constitution.

(*Id.* at pp. 635, 638–39 (finding that school district was immune from local trash collection regulations).)

Because the Legislature has not consented to being subject to San Francisco’s Sunshine Ordinance—which is more expansive than the California Public Records Act—the State and state agencies, including the SFCTA, are not subject to the Sunshine Ordinance’s regulations.

III. SAN FRANCISCO’S SUNSHINE ORDINANCE, AS ADOPTED BY THE VOTERS, EXPRESSLY ACKNOWLEDGES THAT IT DOES NOT APPLY TO THE SFCTA.

Even if the SFCTA did not enjoy the benefit of sovereign immunity as outlined above, it still is not subject to the Sunshine Ordinance based on the text of the ordinance itself, and

1 according to the task force charged with enforcing compliance with the ordinance.

2 **A. The Text of the Sunshine Ordinance Specifically Contemplates That The**
3 **SFCTA Is Exempt From Its Provisions.**

4 Section 67.32 of San Francisco's Sunshine Ordinance states as follows:

5 It is the policy of the City and County of San Francisco to ensure
6 opportunities for informed civic participation embodied in this
7 Ordinance to all local, state, regional and federal agencies and
8 institutions with which it maintains continuing legal and political
9 relationships. Officers, agents and other representatives of the City
10 shall continually, consistently and assertively work to seek
11 commitments to enact open meetings, public information and
12 citizen comment policies by these agencies and institutions,
13 including but not limited to the Presidio Trust, the San Francisco
Unified School District, the San Francisco Community College
District, the *San Francisco Transportation Authority* [sic], the
San Francisco Housing Authority, the Treasure Island
Development Authority, the San Francisco Redevelopment
Authority and the University of California.

14 (emphasis added.) Thus, by its own terms—and contrary to Petitioner's unsupported assertion
15 that "the Sunshine Ordinance was intended to cover all governmental units in the City and
16 County of San Francisco[,]” (MPA at 4:18-19, 5:16-17)—the Sunshine Ordinance does not apply
17 to SFCTA. Nor does it apply to a handful of other “local, state, regional and federal agencies
18 and institutions with which [the City and County of San Francisco] maintains continuing legal
19 and political relationships.” The SFCTA, although it operates within the City and County of San
20 Francisco, is an independent agency with its authority vested from the State Legislature, just like
21 the other enumerated agencies exempt from the Sunshine Ordinance.

22 **B. The Task Force Charged With Enforcing Compliance With the Sunshine**
23 **Ordinance Has Confirmed That The SFCTA Is Not Subject To Its Terms.**

24 Section 67.30 of the Sunshine Ordinance created a Sunshine Ordinance Task Force,
25 charged with ensuring compliance with the ordinance.¹⁶ The Task Force is akin to an agency
26 tasked with enforcement of a statute within its jurisdiction. As such, the Task Force's
27 understanding and interpretation of the Sunshine Ordinance is instructive and should be afforded

28 ¹⁶ See <http://sfgov.org/sunshine/frequently-asked-questions> (last visited February 13, 2018).

1 deference, especially where, as here, its interpretation is consistent with the clear and
2 unambiguous language of the ordinance itself. “An agency interpretation of the meaning and
3 legal effect of a statute [whether embodied in a formal rule or less formal representation] is
4 entitled to consideration and respect by the courts[.]” (*Yamaha Corp. of Am. v. State Bd. of*
5 *Equalization* (1998) 19 Cal. 4th 1, 7.) “[B]ecause [an] agency will often be interpreting a statute
6 within its administrative jurisdiction, it may possess special familiarity with satellite legal and
7 regulatory issues. It is this ‘expertise,’ expressed as an interpretation . . . that is the source of the
8 presumptive value of the agency’s views.” (*Id.* at 11.)

9 On its website, the Task Force states that the Sunshine Ordinance only applies to
10 “agencies and boards and commissions created by the City Charter or by Ordinance or
11 Resolution passed by the Board of Supervisors.”¹⁷ As pertinent here, the Task Force also
12 explains that SFCTA, as well as the other agencies and institutions enumerated in Section 67.32
13 of the Ordinance are *not* subject to the Sunshine Ordinance. Thus, the Task Force acknowledges
14 that such entities are subject only to the State-enacted California Public Records Act and the
15 Brown Act.

16 Does the San Francisco Sunshine Ordinance apply to all
17 departments, agencies, boards and commissions?

18 The San Francisco Sunshine Ordinance applies to all agencies and
19 boards and commissions created by the City Charter or by
20 Ordinance or Resolution passed by the Board of Supervisors. The
21 Sunshine Ordinance *does not apply to* the San Francisco Health
22 Authority, the San Francisco Housing Authority, the San Francisco
23 Redevelopment Agency, *the San Francisco Transportation*
Authority, the Community College District and the San Francisco
School District. These agencies are only subject to the California
Public Records Act and the State open meeting law (which is
called the Brown Act).

24 (City and County of San Francisco Sunshine Ordinance Task Force Website, “Frequently Asked
25 Questions” (emphasis added).¹⁸) This interpretation is consistent with the clear language of
26 Section 67.32 and is fully consistent with the fact that SFCTA is a county agency vested with its

27
28 ¹⁷ <http://sfgov.org/sunshine/frequently-asked-questions> (last visited February 13, 2018).

¹⁸ *Id.*

1 authority from the state. As such, it is not subject to municipal regulations of instituted by San
2 Francisco or those adopted by San Francisco voters.

3 **IV. IN RESPONSE TO THE REQUESTS AT ISSUE, SFCTA COMPLIED WITH**
4 **THE CPRA BY PRODUCING REQUESTED DOCUMENTS AND**
5 **WITHHOLDING DRAFTS AS AUTHORIZED BY THE EXEMPTION.**

6 In response to Petitioner's public record act request, the SFCTA produced documents and
7 also provided explanation for why it was withholding certain documents, pursuant to the
8 statutory exemption. (Petition at ¶19; Stamos Decl. at ¶ 2.) As to the latter, the California Public
9 Records Act expressly states that public agencies, such as the SFCTA , are not required to
10 disclose "[p]reliminary drafts, notes, or interagency or intra-agency memoranda that are not
11 retained by the public agency in the ordinary course of business, if the public interest in
12 withholding those records clearly outweighs the public interest in disclosure." (Cal. Gov't Code
13 § 6254(a).) The documents that were initially withheld were withheld pursuant to subdivision
14 (a) of Government Code 6254. In its correspondence with Petitioner, the SFCTA explained why
15 the public interest in withholding those records clearly outweighed the public interest in
16 disclosure. (Blumenstein Decl., Ex. A (May 8, 2017 Email from S. Stamos to A. Grossman).)

17 While SFCTA's actions were legally valid, the issue is now moot because Respondents
18 have subsequently released these documents to Petitioner. (Blumenstein Decl. at ¶ 2.)

19 //

20 //

21 //

22 //

23 //

24 //

1 **CONCLUSION**

2 As an initial matter, the Court should summarily dismiss this Petition because the Petition
3 is moot. While it is wholly unnecessary to reach the substantive contentions, if it does so, the
4 Court should conclude, as a matter of law, that SFCTA is an independent agency vested with its
5 authority from the state and thus is immune from local regulation.
6

7 Dated: February 27, 2018

NOSSAMAN LLP
STANLEY S. TAYLOR III
CARL L. BLUMENSTEIN
NATASHA SAGGAR SHETH

10
11 By: 

12 Carl L. Blumenstein

13 Attorneys for Respondents SAN FRANCISCO
14 COUNTY TRANSPORTATION AUTHORITY,
TILLY CHANG, and CYNTHIA FONG
15
16
17
18
19
20
21
22
23
24
25
26
27
28